MALAKOFF BHD & ANOR

v.

PENTADBIR TANAH KEDAH

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
DENIS ONG JCA
[CIVIL APPEAL NO: K-01-155-1995]
15 DECEMBER 1999

LAND LAW: *Acquisition of land - Award of compensation - Market value - Whether award based on market value of acquired land - Whether based on correct principles of law - Land Acquisition Act 1960, s. 8*

The appellants' land totalling 2581.4 acres was compulsorily acquired under the provisions of the Land Acquisition Act 1960 ('the Act'). Following the acquisition, the respondent awarded RM10,000 per acre as compensation to the appellants, and subsequently, the award was upheld by the High Court. The appellants contended that RM10,000 per acre did not reflect the market value of the land, and that RM20,000 per acre constituted a more reasonable figure in the circumstances of this case. Hence this appeal by the appellants.

Held:
Per Shaik Daud Ismail JCA

[1] For the purpose of the Act an award of compensation for acquisition of land is based on the market value of the land in question at the time of the gazette notification as provided for in the First Schedule of the Act. What is market value has been amply explained by the Federal Court in *Ng Tiou Hong v. Collector of Land Revenue, Gombak*.

[2] For estate land, as in the present case, several other factors ought also to be considered in order to arrive at the market value. The main factor is the comparable value of other estate lands transacted in the same area or in the vicinity where the nature and terrain of the land are more or less the same.

[3] The learned judge had considered every factor in order to determine the market value of the scheduled lands and he has given his reasons for accepting some and rejecting others. The learned judge's findings of fact in this respect were based on correct principles of law relating to land acquisition, and that being so there is no reason for this court to interfere with those findings.

[4] The learned judge had however failed to consider the appellants' claim for injurious affection. In the circumstances the appeal is allowed only to the extent of allowing the claim of compensation of RM9,300 for injurious affection with interest at 8% per annum.

[Appeal partly allowed; award of compensation by trial judge affirmed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Tanah perayu telah diambil secara paksa di bawah Akta Pengambilan Tanah 1960 ('Akta'). Ekoran pengambilan tersebut, responden telah menetapkan award gantirugi sebanyak RM10,000 se ekar, award mana kemudiannya disahkan oleh Mahkamah Tinggi. Perayu mengatakan bahawa harga RM10,000 se ekar tidak mencerminkan harga pasaran tanah yang di ambil, dan bahawa, dalam halkeadaan kes, harga yang lebih munasabah ialah RM20,000 se ekar. Perayu dengan itu mengemukakan rayuan semasa di sini.

Diputuskan:
Oleh Shaik Daud Ismail HMR

[1] Untuk maksud Akta sesuatu award gantirugi kerana pengambilan tanah adalah diasaskan kepada harga pasaran tanah tersebut pada waktu perisytiharan gazet seperti yang diperuntukan dalam Jadual Pertama Akta. Apa itu harga pasaran telah dijelaskan oleh Mahkamah Persekutuan dalam *Ng Tiou Hong v. Collector of Land Revenue, Gombak.*

[2] Untuk tanah ladang, seperti halnya di sini, beberapa faktor lain harus juga diambilkira untuk menentukan harga pasaran. Faktor utama ialah harga bandingan ladang-ladang lain yang berada setempat dengan tanah tersebut atau di sekitarnya di mana keadaan permukaan tanahnya adalah lebih kurang sama.

[3] Hakim bijaksana telah menimbang setiap faktor bagi menentukan harga pasaran tanah berjadual dan telah juga memberikan sebab-sebab mengapa beliau menerima sebahagian faktor-faktor tersebut dan menolak yang lainnya. Pendapatan fakta hakim bijaksana berhubung soal ini adalah didasarkan kepada prinsip undang-undang yang betul berkaitan dengan pengambilan tanah, dan oleh hal yang demikian tiada alasan untuk mahkamah ini mengganggu pendapatan tersebut.

[4] Hakim bijaksana bagaimanapun gagal menimbang permohonan perayu untuk 'injurious affection'. Oleh itu rayuan adalah dibenarkan setakat membenarkan tuntutan gantirugi untuk 'injurious affection' sebanyak RM9,300 dengan faedah sebanyak 8% setahun.

[Rayuan dibenar sebahagiannya; award gantirugi oleh hakim bicara disahkan.]

Case(s) referred to:
Ng Tiou Hong v. Collector of Land Revenue Gombak [1984] 1 CLJ 35 ***(refd)***
Siah Brothers Plantation Sdn Bhd v. Pentadbir Tanah dan Daerah Kuantan [1993] 2 MLJ 51 ***(refd)***

Legislation referred to:
Land Acquisition Act 1960, s. 8

For the appellants - Wong Chong Wah (Lim Koon Huan with him); M/s Skrine & Co
For the respondent - Roslan Hj Abu Bakar FC

[Appeal from High Court, Alor Setar; No: 15-47-1995]

Reported by WA Sharif

JUDGMENT

Shaik Daud Ismail JCA:

This appeal is in respect of a land acquisition matter and is against the decision of the High Court which had on 26 September 1995, confirmed the award of the Kedah Land Administrator. The declaration of the intended acquisition of the scheduled lands under s. 8 of the Land Acquisition Act 1960 (the Act) was published in the Government of Kedah Gazette on 3 March 1994. The scheduled lands form part of Kellang Lama and Home Divisions of Kuala Muda Estate totalling 2,581.4 acres.

The scheduled lands are located about six kilometers from the town of Sungai Petani, Kedah, and is divided by the Sungai Petani/Alor Setar main road and both sides have road frontage. It is not disputed that the scheduled lands are situated in a fast developing area. In the vicinity of the scheduled lands, are two housing schemes, a Teachers' Training College, the Institute Tadbiran Awam northern region, Pusat Serenti and several other government departments. Therefore, there is potential for development. The Land Administrator awarded RM10,000 per acre and this award was upheld by the High Court. Hence the appeal to this court. It is the contention of the appellants that in the light of the position of the scheduled lands being in the midst of a developing area, the award of RM10,000 does not reflect the market value of the lands. The appellants pray for RM20,000 per acre. In addition they pray for an award for injurious affection of an area of 1.55 acres amounting to RM9,300. This item of compensation though claimed was not dealt with by the learned judge.

It cannot be denied that for the purpose of the Act an award of compensation for acquisition of land is based on the market value of the land in question at the time of the gazette notification as provided for in the First Schedule to the Act. What is market value has been amply explained in *Ng Tiou Hong v. Collector of Land Revenue Gombak* [1984] 1 CLJ 35; [1984] 2 MLJ 35 a decision of the Federal Court.

For Estate land, as in the present case, several other factors ought also to be considered in order to arrive at the market value. The main factor is the comparable value of other estate lands transacted in the same area or in the vicinity where the nature and terrain of the land are more or less the same. (See *Siah Brothers Plantation Sdn. Bhd. v. Pentadbir Tanah dan Daerah Kuantan* [1993] 2 MLJ 51).

In this respect the appellants' valuers had provided four comparables while the respondent's valuation report contained eight comparables, all relating to estate lands in the vicinity and elsewhere. The learned judge found a common comparable transaction in both valuation reports and this concerned a piece of land about one kilometer from the Bakar Arang Industrial area comprising of 555.633 acres. This land on lot 1029 was transacted at RM13,500 per acre on 22 July 1990. This land is also near the Sungai Petani/Butterworth main road. At the time of the transaction, there was a rapid industrial development in the surrounding area. The learned judge came to the conclusion that this common comparable was the best comparable to take into consideration as the other comparables were situated in the Kulim district, which is nearer to Penang. Although the learned judge considered the common comparable to be the most suitable he nevertheless considered all the other comparable transactions contained in both the appellants' and the respondent's valuation reports.

On going through his judgment, we are satisfied that the learned judge had considered every factor in order to determine the market value of the scheduled lands and he has given his reasons for accepting some and rejecting others. These are findings of fact of which this court ought not to interfere unless there are cogent reasons to do so. We find none. We are of the view that the learned judge had based his decision on correct principles of law relating to land acquisition. Having considered this matter carefully we can find no reason to interfere with the findings of the learned judge on the amount of compensation for the scheduled lands in question. However, we did find that the learned judge had failed to consider the appellants' claim for injurious affection. In his submission before us, the learned Senior Federal Counsel on behalf of the respondent, had also not touched on this item of compensation.

In the light of this, we allowed the appeal only to the extent of allowing the claim of compensation of RM9,300 for injurious affection with interest at 8% per annum from the date of possession to the date of realisation, and confirmed the learned judge's decision on the amount of compensation awarded for the scheduled lands. We also ordered fifty percent of the costs to the appellants here and in the court below and the deposit to be refunded to them.